S.B.CIVIL WRIT PETITION NO.4127/2007
(Dr.Shyam Bihari Gupta Vs. The Rent Tribunal, Udaipur & ors.)

DATED : 22nd August 2007

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Siddharth Joshi for the petitioner
Mr.Om Mehta for the respondent No.2

Reportable

The writ petitioner is defending a petition for eviction (Case No.57/2003) filed by his landlord and pending before the Rent Tribunal, Udaipur. Though a copy of the eviction petition has been filed with this writ petition as Annexure-1, but copy of the reply submitted by the petitioner has not been annexed; however, the fact that the present petitioner is a tenant in the premises in question seems not to be in dispute.

It appears from the material placed on record in this writ petition and cognate Writ Petition No.7369/2006 relating to the same eviction petition and being decided by a separate order today, that the issues in the matter have been framed on the questions of reasonable and bona fide requirement, material alteration and acquiring of suitable alternative accommodation by the tenant; and this Court by the order dated 17.08.2006 passed in an earlier writ petition has expected the Tribunal to decide the matter within two months thereof.

While the matter was being proceeded in cross-examination of the witnesses, the petitioner-tenant moved an application in the said eviction petition purported to be under Section 21(3) of the Rajasthan Rent Control Act, 2001 ('the Act of 2001') read with Order 13 Rule 3 CPC and Section 17 of the Indian Registration Act, 1908. By way of the said application (Annex.2) the writ petitioner, while referring to the rent note Ex.1A, pointed out that the period of lease was six years; and there had not been any other document between the parties regarding the terms of lease. Thus, the petitioner contended that the document was compulsorily required to be registered; and for want of registration, the document was not admissible in evidence and was required to be rejected in terms of Rule 3 of Order 13 of the Code of Civil Procedure.

The learned Tribunal has proceeded to reject the said application by its order dated 29.05.2007 (Annex.5). The Tribunal has observed that the document in question is a unilateral rent note; and though provides for revision of rent in case of the tenancy continuing for a longer period, such document does not require registration. The Tribunal has proceeded to impose costs of Rs.3,000/- with reference to the orders earlier made by this Court for expeditious disposal of the matter and for delay caused due to such baseless application moved by the tenant. The order dated

29.05.2007 (Annex.5) is sought to be questioned in this writ petition.

Learned counsel Mr.Joshi submitted that the Tribunal has been in error in not reading the document as a whole; and while referring to the contents of the document in question (Annex.4) submitted that clause-14 thereof clearly states about the rent commencing from 01.02.1972 at Rs.300/- per month, then to be revised from 01.02.1974 at Rs.325/- per month, from 01.02.1975 at Rs.375/- per month, from 01.02.1976 at Rs.425/- per month, and from 01.02.1977 at Rs.475/- per month; and then to be paid at Rs.500/- per month after 01.02.1978. Learned counsel contended that the Tribunal has merely read some part of the document but has omitted to consider the said clause-14 that clearly makes out that premises were let out for at least six years and, according to the learned counsel, the document being of lease of immoveable property for term exceeding one year, it compulsorily required registration; and for want of registration, cannot be read in evidence. Learned counsel submitted that the consideration adopted by the Tribunal of the document being not signed by both the parties and being signed by the tenant only is entirely irrelevant; and if that be so, then the document cannot be taken into consideration at all. Learned counsel further submitted that the Tribunal has

been in error in rejecting the submissions of the petitioner only because the case is required to be decided at an early date without examining the document and the requirements of law.

The respondent has appeared in caveat and learned counsel Mr.Om Mehta appearing for the respondent-landlord submitted that the document in question being a unilateral one does not require compulsory registration and the application moved only for the purpose of delaying the proceedings has rightly been rejected.

Having examined the record of the case, this Court is clearly of opinion that this writ petition remains absolutely bereft of substance and deserves to be dismissed.

The objection raised against the document in question is fundamentally incorrect because the said document is not a lease of immoveable property for any term. The eviction petition states that the premises were delivered in possession under oral agreement on a rent of Rs.300/- per month; and the tenant executed a rent note in relation to the terms of tenancy. The document in question itself states (vide paragraph-2) that the premises in question have been taken by the tenant from the landlord under an oral agreement and at a monthly rent of Rs.300/-. The submission that clause-14 of the document has not been read is not correct. The learned Tribunal has considered the said clause and has rightly

observed the same to be relevant only towards the agreement for revision of rent. The document in question is a unilateral document signed only by the petitioner and not by the landlord and is not a lease deed but a rent note simpliciter, that too regarding terms of a monthly tenancy. The objection regarding its registration remains fundamentally baseless; and the Tribunal cannot be said to have erred in rejecting the application moved by the present petitioner.

Looking to the procedural wrangles the present eviction petition has been got entangled in, it appears apposite, rather imperative, to point out the salient features of the scheme of dealing with the petition for eviction under the Act of 2001. Of course, the Tribunal is to be guided by the principles of natural justice (per Section 21); and, ordinarily, is to permit cross-examination of the witnesses if so required on the relevant aspects, as explained by the Division Bench of this Court in the case of Aasandas Vs. State of Rajasthan and others: 2005 (1) DNJ 431 yet, such adherence to the principles of natural justice is not meant for protraction of the petitions under the Act of 2001. Even while observing that ordinarily where the question of facts depends on oral testimony, cross-examination of the deponent is to be permitted when demanded, the Division Bench has sounded the note of caution that,-

> "However, care should be taken that as far as possible, the witnesses of each party should be examined on one single day and application be disposed of as early as possible within a period of two months."

Section 15 of the Act provides for the procedure for eviction of tenant. Under sub-section (1) of Section 15, the landlord or person claiming possession is required to file a petition before the Rent Tribunal accompanied by affidavits and documents, if any, upon which the applicant seeks to rely. Sub-section (2) relates to the procedure for issuance of notice to the tenant requiring him to submit reply accompanied by affidavits and documents, if any, upon which he relies. Sub-section (3) permits the tenant to submit his reply, affidavits and documents after serving copies thereof to the applicant within 45 days of service of notice. Then, sub-section (4) permits filing of rejoinder by the applicant within 30 days from the date of service of the reply. Sub-section (5) requires the Tribunal to fix a date of hearing not later than 180 days from the date of service of notice on the tenant and the petition is required to be disposed of within a period of 240 days from the date of service of notice on the tenant; and per sub-section (6) the Rent Tribunal during the course of such hearing may hold such summary enquiry as it deems necessary and decide

the petition; and may also make efforts for conciliation or settlement. Section 15 of the Act reads thus:

> **"Section 15. Procedure for eviction of tenant.- (1)** The landlord or any person claiming possession shall file a petition before the Rent Tribunal and such petition shall be accompanied by affidavits and documents, if any, upon which landlord or person claiming possession wants to rely.
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> (2) The Rent Tribunal, upon filing of petition under Sub-section (1), shall issue notice accompanied by copies of petition, affidavits and documents, if any, fixing a date not later than thirty days from the date of issue of notice requiring the tenant to submit reply accompanied by affidavits and documents, if any, on which the tenant relies. The service of notice shall be effected through process server of the Tribunal or Civil Court as well as by registered post, acknowledgment due. Notice duly served by any of these methods shall be treated as sufficient service.
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> (3) The tenant may submit his reply, affidavits and documents after serving the copies of the same to the petitioner, within a period not exceeding forty five days from the date of service of notice.
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> (4) The petitioner may thereafter file rejoinder if any, after serving copy to the opposite party, within a period of thirty days from the date of service of reply.
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> (5) The Rent Tribunal shall thereafter fix a date of hearing which shall not be later than one hundred and eighty days from the date of service of notice on the tenant. The petition shall be disposed of within a period of two hundred and forty days from the date of service of notice on the tenant.

> (6) The Rent Tribunal during the course of such hearing may hold such summary inquiry as it deems necessary and decide the petition. The Rent Tribunal may also make efforts for conciliation or settlement of dispute between the Parties.
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> (7) Where the Rent Tribunal decides the petition in favour of the landlord, it shall issue a certificate of recovery of possession from the tenant.
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> (8) The certificate issued under sub-section (7) shall not be executable for a period of three months from the date for decision:
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> Provided that in case of premises let out for commercial use such certificate shall not be executable for a period of six months from the date of decision."

The procedure provided for dealing with such petitions under the Act of 2001 does not require decision on such interlocutory applications step by step, one by one. The time limit envisaged by the statute for decision of the petitions within 240 days of the date of service of notice on tenant [vide Section 15(5)] is meant for adherence rather than avoidance. Then, the Tribunal may hold such summary enquiry as it deems necessary [vide Section 15 (6)]. Section 21 of the Act as an integral part of the entire scheme of procedure in wide terms gives powers to the Rent Tribunal and the Appellate Rent Tribunal for the purpose of holding such summary enquiry and per sub-section (3) of Section 21, such Tribunals are not bound by the procedure laid down by the Code of Civil

Procedure but are guided by the principles of natural justice, and subject to the other provisions of the Act or Rules thereunder have the powers to regulate their own procedure.

In the fact situation of the present case where this Court expected as back as on 17.08.2006 for decision of the matter within two months, and looking to the requirements of the statute and the nature of application moved, it would have been discreet on the part of the Tribunal if such application were taken up for consideration only at the time of final hearing and not piecemeal. There does not appear any requirement under the scheme of dealing with the petitions for eviction that every such application be heard and decided separately.

Be that as it may, in the present case, as noticed above, the application has been rejected on valid and relevant considerations; and the order impugned is affirmed on merits. Though, ordinarily, imposing of excessive costs may not be justified; but in the circumstances of this case, the Tribunal cannot be faulted in imposing such costs on the petitioner for moving such a frivolous application.

The petition fails and is, therefore, rejected.

(DINESH MAHESHWARI),J.

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